

1

2

3

4

5

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 || RAFAEL CASTILLO, JR.

Petitioner.

11 | VS.

12 || RENEE BAKER, et al.,

13 || Respondents.

Case No. 3:13-cv-00360-HDM-WGC

ORDER

The court found that the petition for a writ of habeas corpus (#4) was mixed, containing both grounds exhausted and unexhausted in state court. Order (#14). The court gave petitioner the opportunity to declare what he wished to do with the unexhausted grounds. *Id.* Petitioner has not responded within the allotted time. The court will dismiss this action. The court does not consider whether a subsequently filed petition will be timely under 28 U.S.C. § 2244(d).

Reasonable jurists would not disagree with this conclusion, and the court will not issue a certificate of appealability.

IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice for plaintiff's failure to exhaust all his state-court remedies. The clerk of the court shall enter judgment accordingly.

25 | //

26 | //

27 | //

28 | //

1 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.
2
3

4 DATED: January 21, 2014.
5
6

7 
8
9

10 HOWARD D. MCKIBBEN
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28